IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 28997 of 2006(B)

PETITIONER:

ZACHARIA, S/O.MOHAMMED KUNJU,
PUTHEN BUNGLOW, POLAYATHODU WARD, PATTATHANAM P.O.
KOLLAM.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS:

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1. THE BRANCH MANAGER,
THE QUILON CO-OPERATIVE URBAN BANK LTD.NO.Q.960,
Y.M.C.A. ROAD, KOLLAM.

2. THE JOINT REGISTRAR,
CO-OPERATIVE DEPARTMENT, KOLLAM.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI.RANJITH XAVIER
R2 BY GOVT. PLEADER SRI.P.K.RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.28997 OF 2006)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the application submitted by the petitioner before the Quilon Co-operative Urban Bank Ltd.No.960, Kollam dtd.20.9.99.

Ext.P2: Copy of the Encumbrance Certificate submitted by the petitioner before the 1st respondent dtd.6.10.99.

Ext.P3: Copy of the cash receipt issued by R1 to the petitioner for collecting Rs.9,39,203/- dtd.13.7.2006.

Ext.P4: Copy of the representation submitted by the petitioner before R1 dtd.17.10.2000.

Ext.P5: Copy of the representation submitted by the petitioner before R2 dtd.17.10.2006.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 28997 OF 2006 B

Dated this the 26th day of March, 2007

J U D G M E N T

The petitioner defaulted repayment of loan amounts taken from the first respondent- Bank. He requested for the benefit under the one time settlement scheme. While calculating the amounts due under the one time settlement scheme, the first respondent collected interest in excess of the amounts due as per the one time settlement scheme, is the grievance raised by the petitioner in this writ petition. He therefore seeks a refund of the excess interest collected from him. He has also a case that he had not been given a stamped receipt for the amounts collected from him and that the first respondent has not executed a release deed in respect of the mortgage executed by the petitioner in respect of his property as security for the loan amounts which have been completely repaid and the liability discharged.

2. Learned counsel for the first respondent submits that the petitioner cannot contend that the first respondent has collected interest in excess of the amounts due from him since

he had already paid the amount demanded and the entire loan documents have been returned to the petitioner and the loan account is closed.

3. The fact that the loan account had been closed is not a ground for rejecting the prayers of the petitioner if actually the first respondent has collected the amounts in excess of the amounts due as per the one time settlement scheme from the petitioner. Since there is a dispute between the petitioner and the first respondent in respect of the same, I feel that it is only appropriate to direct the second respondent to consider the matter. Accordingly, the second respondent is directed to consider Ext.P5 representation filed by the petitioner after affording an opportunity of being heard to both the petitioner and the first respondent, expeditiously, at any rate within a period of six weeks from the date of receipt of a copy of this judgment. If the second respondent finds that excess amount has been collected from the petitioner by way of interest, the first respondent shall repay the said amount to the petitioner within one month from the date of receipt of a copy of the order of the first

respondent. There would also be a direction to the first respondent to issue a stamped receipt to the petitioner for the amounts received from him within one week from today. After the dispute has been finally settled, the first respondent shall execute a release deed in respect of the mortgage at the cost of the petitioner, without any further delay.

The writ petition is disposed of with the above direction.

I.A.No.4320 of 2007 is an application for direction and the same does not survive. It is closed.

S. SIRI JAGAN,
Judge

Mbs/

K.THANKAPPAN, J

Crl.Appeal NO. OF 2001

J U D G M E N T

DATED:13-02-2007